

CIRCULAR

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CIRCULAR NO. 33/05

TO MEMBERS OF THE ASSOCIATION

Dear Member:

CHANGES TO THE RULES OF THE ASSOCIATION FOR THE 2006 POLICY YEAR

Please note that your Board of Directors recently approved the following changes to the Club's Rules to take effect from February 20, 2006.

As in previous years, they derive from a continuing review of the language of the existing Rules and a desire to maintain good housekeeping in the interests of the clarity and efficacy of the terms on which Members are insured by the Club.

Class I: Protection and Indemnity Insurance

Clarification of Day-To-Day Discretionary Powers

As currently drafted, the Rules are somewhat inconsistent as to the identity of the party in whom power is vested in regard to the exercise of discretion on day-to-day matters of cover, claims handling and so on.

Accordingly, the following changes are intended, *mutatis mutandis*, to bring references to the Association, the Directors and the Managers into harmony throughout the Rules. This will entail the following amendments going forward (page numbers refer to those of the current American Club Rule Book):

"Association" to "Managers"

Class I, Rule 2.

- Section 1.B. proviso i (page 40).
- Section 2.a (page 42).
- Section 2.b (page 43).
- Section 3. proviso i and vi (page 44).
- Section 6. proviso 3 and 4 (page 47).
- Section 7.4. provisos a, b, d and e (pages 48 to 50)
- Section 8.4 (pages 51 and 52).
- Section 12.1 (page 53).
- Section 13.2 and 4 (pages 53 and 54).
- Section 14 (page 55).
- Section 15 (page 55).
- Section 16 (page 55).
- Section 17 (page 56).



Class I, Rule 3.

Section 7. iii (page 62).
Section 15.b (page 64).

Class I, Rule 5

Section 1.1.c (page 81).
Section 1.2.b iv and proviso thereto (page 82).

“Directors” to “Managers”

Class I, Rule 2.

Section 18 (page 56).

Class I, Rule 3.

Section 1.3 (page 60).

Duty to Notify Potential Claims and Time Bar

In order to clarify the circumstances in which Members have a duty to notify potential claims, and the manner in which the time bar for claims is to operate, the current Class I, Rule 1, Section 4.17 (page 28) will be deleted and a new wording, as below, set out in its place:

- 17. Any happening, occurrence, event or matter (including, but not limited to, any legal or arbitration proceedings commenced against the Member) which may be liable to cause the Member to incur loss, damage, liabilities, costs or expenses for which he may be insured by the Association shall be notified promptly to the Managers by the Member on it being known by him. In so far as there may be any difference of opinion between the Member and the Managers as to whether any happening, occurrence, event or matter is or was such as might be liable to cause the Member to incur loss, damage, liabilities, costs or expenses, or as to whether the Member knew or ought to have known of such happening, occurrence, event, or matter as aforesaid, the determination of the Managers shall be final. A Member shall take and continue to take all such steps as may be reasonable for the purpose of averting or minimizing any expense or liability in respect whereof he may be insured by the Association.**

In conjunction with this, Class I, Rule I, Section 4.26 (pages 29 and 30) will be amended to read as follows:

26.a. In the event:

- i a Member fails to fulfill his duty of prompt notification as contained in Rule 1.4.17 above; and/or***
- ii a Member fails to submit a claim to the Managers for reimbursement of any liabilities, costs or expenses within six months after discharging or settling the same;***



the Member's claim against the Association shall be discharged and the Association shall be under no liability in respect thereof unless the Directors in their absolute discretion shall otherwise determine.

- b. Without prejudice to paragraph (a) of this Rule, in no event shall any claim be recoverable from the Association unless written notice thereof has been given to the Managers within three years after the Member knew or ought to have known of the happening, occurrence, event or matter giving rise to the claim. In so far as there may be any difference of opinion between the Member and the Managers as to whether the Member knew or ought to have known of such happening, occurrence, event or matter giving rise to the claim as aforesaid, the determination of the Managers shall be final.***

Disputes

In order to provide greater flexibility to the Board as to the manner in which disputes between Members and the Club are to be resolved, the terms of Class I, Rule I, Section 4.43 (page 36) will be amended to read as follows:

- 43. If any difference or dispute shall arise between a Member and the Association concerning the construction of these Rules, or the insurance afforded by the Association under these Rules, or any amount due from the Association to the Member, such difference or dispute shall in the first instance be referred to the Directors. Such reference shall be on written submissions only. No Member shall be entitled to maintain any action, suit or other legal proceedings against the Association upon any such difference or dispute unless and until the same has been referred to the Directors and they shall have:***

- i given their decision thereto; or***
- ii given notice to the Member that they do not wish to adjudicate upon such difference or dispute; or***
- iii been in default for three months in doing either of the above.***

Any such suit against the Association shall be brought in the United States District Court for the Southern District of New York. In no event shall suit on any claim be maintainable against the Association unless commenced within two years after the loss, damage or expense resulting from liabilities, risks, events, occurrences and expenditures specified under this Rule shall have been paid by the Member.

The Funding of Closed Policy Years

The provisions of Class I, Rule 4.6 as currently drafted incorporate concepts which do not, on reflection, accurately represent the American Club's position regarding closed policy years i.e. there are no "funds standing to the credit of any... closed policy years" since all such funds are aggregated together as the Club's property.

Accordingly, the language currently contained in Class 1, Rule 4.6 (page 68) will be replaced by the following wording:

- 6. If at any time or times after any policy year which commenced on or after February 20, 1989 has been closed, any additional costs or expenses attributable***



to such policy year(s) are incurred by the Association, the Directors may in their absolute discretion decide to fund such costs or expenses:

- i. by transferring funds from the reserves of the Association; and/or**
- ii. by levying interim or final supplementary premium in respect to any open policy year(s).**

Returns of Premium Consequent Upon Lay-Up

The 30 day qualifying period for the granting of laid-up returns under Class I, Rule 4.11 (page 70) will be increased to 45 days and the circumstances in which laid-up returns are granted will not include periods when a vessel is under repair.

This will entail the addition of the words "**or is under repair**," after the words "**or cargo onboard**" in the language of Class I, Rule 4.11.i. (page 70).

Class II: Freight, Demurrage and Defense Insurance

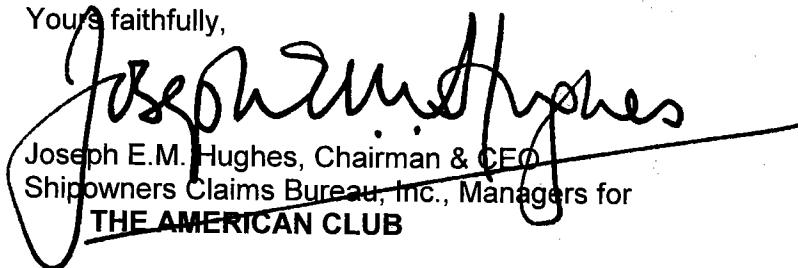
The amendments set out above will also be formally incorporated into, and form an integral part of, the Rules of Class II to the extent that they are consistent with the subject and context of the said Rules of Class II.

Class III: Insurance For Charterers' Risks

The amendments set out above will also be formally incorporated into, and form an integral part of, the Rules of Class III to the extent that they are consistent with the subject and context of the said Rules of Class III.

It is hoped that the foregoing changes are clear, but if any Member requires any further explanation or comment, the Managers will be happy to respond.

Yours faithfully,


Joseph E.M. Hughes, Chairman & CEO
Shipowners Claims Bureau, Inc., Managers for
THE AMERICAN CLUB